

## IN THE MICHIGAN COURT OF APPEALS

### ORDER

Re: **People of MI v Jesus Aguirre**  
Docket No. **267967**  
L.C. No. **00-044580-FC & 00-044582-FC**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),  
orders:

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal filed on January 25, 2006, is DISMISSED for lack of jurisdiction because it was not filed within 12 months of entry of the judgments of sentence as required by MCR 7.205(F)(3) and neither exception found in MCR 7.205(F)(4) applies. In particular, the first exception does not apply because the motion to withdraw the plea was not filed within 12 months of the judgments of sentence. There is no individual appeal of an order denying a motion to withdraw the plea. The purpose of a motion to withdraw the plea is to toll the time period that an application for leave to appeal is to be filed from the judgment of sentence and to preserve an issue or issues. However, the appeal is still from the judgment of sentence, which in this case is untimely. In light of the fact that the trial court declined to review the motion as a motion for relief from judgment, this dismissal is without prejudice to filing a motion for relief from judgment in the trial court and then an application for leave to appeal in this Court if the motion for relief from judgment is denied.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 27 2006

Date

*Sandra Schultz Mengel*  
Chief Clerk